IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7822 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARVATSINGH @ NARU PRUTHVISINGH LABANA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner No. 1

MS MITA PANCHAL, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 01/10/2003

ORAL JUDGEMENT

1. By way of this Special Civil Application, the petitioner has challenged the order dated 28.4.2003 passed by the District Magistrate, Dahod, against him, in exercise of powers under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as "PASA Act") declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act, and directing the detention of the petitioner.

In pursuance of the said impugned order in this petition, the petitioner is detained in jail since 28.4.2003.

2. The grounds served upon the petitioner and as placed on record indicates that in all six offences came to be registered against the petitioner within the span of period from 13.2.2003 to 23.4.2003 under Sections 66(b), 65(a)(e), 81, 83 and 116(b) of the Bombay Prohibition Act. The detaining authority also took into consideration three statements of the witnesses recorded by the proposing authority on 28.3.2003 and verified by the detaining authority on 24.3.2003 and 25.3.2003, wherein the incidents occurred before one and half months back or two months back were referred by the witnesses, wherein the witnesses were either forced to keep illegal liquor at their house or on suspicion that the witnesses were informing the police, the witnesses were beaten, and vehicle was demanded by the petitioner from one of the witness for illegal transport of liquor. On refusing, the witness was beaten. From the above facts, the order impugned came to be passed.

3. Learned Advocate Ms. Subhadra G. Patel for the petitioner and learned AGP Ms. Mita Panchal for the respondents were heard at length.

4. Out of various contentions raised on behalf of the petitioner, and controverted by the AGP, it appears that the matter can be disposed of solely on the ground that whether there was material before the detaining authority to come to the conclusion that the activities of the petitioner was prejudicial to the maintenance of public order. On verifying the record, it clearly appears that the six crimes registered against the petitioner under the Bombay Prohibition Act, can hardly be said to be the activity affecting the public order. The other material which the detaining authority took into consideration are the statements of the witnesses, as aforesaid, but going through, it clearly appears that each witness states individual quarrel with the petitioner which the petitioner picked up with the witnesses. These cases also can hardly be said affecting the public order or even public tempo of life. It is the potentiality of the act to disturb the even tempo of life of community, which makes it prejudicial to the maintenance of public order. There was no material before the detaining authority that by the activities of the petitioner the public order was disturbed. At the most, it can be said that if the statements of the witnesses are taken on their face value, then, there was problem of law and order but there was no activity on the

part of the petitioner to affect public at large or even the tempo of life in certain locality was disturbed. Thus, the subjective satisfaction of the detaining authority is vitiated on this ground alone and the impugned order is required to be set aside on this ground alone.

5. In the result, this Special Civil Application is allowed with no order as to costs. The order impugned in this Special Civil Application passed by the District Magistrate, Dahod, on 28.4.2003 under Section 3(1) of the PASA Act against the petitioner is quashed and set aside. Petitioner is directed to be set at liberty forthwith if he is not required to be detained in jail for any other purpose. Rule made absolute.

(J.R. Vora, J.)

p.n.nair